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The scope and application of the principle of universal jurisdiction

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 71/149, by which the Assembly requested the Secretary-General to prepare a report on the basis of information and observations received from Member States and relevant observers, as appropriate, on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties and their national legal rules and judicial practice.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 71/149. It reflects comments and observations received since the issuance of the report of 2016 (A/71/111) and should be read together with that and prior reports (A/65/181, A/66/93 and Add.1, A/67/116, A/68/113, A/69/174 and A/70/125).

2. In accordance with resolution 71/149, section II of the present report, together with tables 1 to 3, focuses on specific information regarding the scope and application of universal jurisdiction on the basis of relevant national legal rules, applicable international treaties and judicial practice. Information received from observers is provided in section III, and section IV contains a synopsis of issues raised by Governments for possible discussion.

3. Responses were received from Australia, Austria, El Salvador, Finland, Germany, Senegal, Togo and Ukraine.

4. Responses were also received from the Council of Europe, the International Committee of the Red Cross and the United Nations Environment Programme.

5. The complete submissions are available from the website of the Sixth Committee of the General Assembly.

II. Scope and application of universal jurisdiction on the basis of the relevant domestic legal rules, applicable international treaties and judicial practice: comments by Governments

A. Basic legal rules

1. Constitutional and other domestic legal frameworks[1]

Australia[2]

6. Australia reiterated its implementation of the principle in Australian law, separated into offences grouped into: (a) genocide, crimes against humanity, war crimes and torture offences; (b) slavery offences; and (c) piracy and other acts of violence at sea. Australia reiterated that in relation to all of the above offences, the general principles of Australian law relating to individual criminal responsibility apply.

Austria[3]

7. Austria reiterated comments made previously as relating to sections 64 and 65 of the Austrian Penal Code (see generally A/65/181; A/69/174, paras. 6 to 8; and A/70/125, paras. 6 to 9).

El Salvador[4]

8. El Salvador reiterated that universal jurisdiction is an essential instrument within the rule of law because its purpose is to prevent impunity for serious

[1] Table 1 contains a list of crimes contained in various codes, as mentioned in the comments by Governments.

[2] For previous comments submitted by Australia, see A/65/181, A/68/113 and A/71/111.

[3] For previous comments submitted by Austria, see A/65/181, A/69/174 and A/70/125.

[4] For previous comments submitted by El Salvador, see A/65/181, A/66/93, A/67/116 and A/69/174.

international crimes, including genocide, torture and war crimes condemned internationally (see A/66/93, paras. 19 and 54; and A/67/116, paras. 6 and 37).

Finland[5]

9. Finland reported that section 1(1) of the decree on the implementation of section 7 of chapter 1 (international crimes) of the Criminal Code had been amended to include the criminalization of counterfeiting currency, preparation for counterfeiting or the use of counterfeited currency, as referred to in the International Convention for the Suppression of Counterfeiting Currency, 1929. With respect to the same crimes in relation to the euro, where the decree on implementation had previously made reference to Council Framework Decision 2000/383/JHA, it was amended to refer to article 8 (2) of Directive 2014/62/EU of the European Parliament and the European Council, which had repealed Council Framework Decision 2000/383/JHA.

Germany[6]

10. Germany stated that the German Code of Crimes against International Law, which entered into force on 30 June 2002 (Federal Law Gazette I, p. 2254), made the gravest crimes against international law a criminal offence under German law, including genocide (section 6), crimes against humanity (section 7) and war crimes (sections 8 to 12) and, since 1 January 2017, the crime of aggression (section 13). The Code of Crimes only applies to criminal offences committed after this law entered into force. Criminal offences committed before 30 June 2002 are dealt with in accordance with prior legislation. The Public Prosecutor General of the Federal Court of Justice is responsible for prosecuting criminal offences under the Code of Crimes. Special permission is not required to instigate an investigation or a similar procedure.

11. According to the first sentence of section 1 of the Code of Crimes, the principal of unlimited universal jurisdiction applies to genocide (section 6), crimes against humanity (section 7) and war crimes (sections 8 to 12); the application of the Code to the crime of aggression (section 13), on the other hand, is only possible if the offence bears a concrete relation to Germany (section 1).

Senegal

12. Senegal noted that the principle of universal jurisdiction had been introduced into its law by Act No. 2007-05 of 12 February 2007 amending the Code of Criminal Procedure, concerning the implementation of the Rome Statute of the International Criminal Court. Pursuant to article 669 of the amended Code of Criminal Procedure, "any foreign national who, outside Senegalese territory, has been accused of committing or aiding in the commission of any of the crimes mentioned in articles 431-1 to 431-5 of the Criminal Code, an offence against the security of the State or forgery of the State seal or national currency, or of the acts referred to in articles 279-1 to 279-3 and 295-1 of the Criminal Code, may be prosecuted and tried under Senegalese law or laws applicable in Senegal if he or she is arrested in Senegal, if a victim resides in Senegalese territory or if the Government secures the alleged offender's extradition".

13. Senegalese lawmakers have not limited the exercise of universal jurisdiction to genocide, crimes against humanity and war crimes. Other crimes and offences (including offences against the security of the State, forgery of the State seal or

[5] For previous comments submitted by Finland, see A/65/181, A/67/116 and A/71/111.

[6] For previous comments submitted by Germany, see A/65/181.

national currency, acts of terrorism, attacks, plots and other crimes against the authority of the State or the integrity of the national territory, crimes likely to disrupt public order and acts of torture) may also give rise to the exercise of universal jurisdiction by the Senegalese courts.

14. While the new text of article 669 of the Code of Criminal Procedure was adopted to implement the Rome Statute, it has been strengthened by the accession of Senegal to a number of other international instruments concerning matters liable to warrant the application of universal jurisdiction. Pursuant to article 98 of the Senegalese Constitution, any international treaty ratified by Senegal constitutes an integral part of its domestic law and, consequently, is binding on the Senegalese authorities. There are therefore many instruments that could give rise to prosecutions under universal jurisdiction by the Senegalese courts.

Togo[7]

15. Togo reported that the new Criminal Code of November 2015 contains provisions that allow Togolese courts to exercise jurisdiction over certain serious crimes committed outside the country. In particular, article 155 states that "the provisions of this chapter shall apply to crimes committed within or outside the country, regardless of the nationality of the perpetrator or accomplice and of the place where the offence was committed". The crimes concerned are genocide, war crimes, crimes against humanity and apartheid. Togo noted that an effective reform of the Code of Criminal Procedure will ensure that this issue is taken into account in a comprehensive manner.

Ukraine

16. Ukraine reported that universal jurisdiction was enshrined in article 8 of the Criminal Code of Ukraine, under which foreign nationals or stateless persons not permanently residing in Ukraine may be held criminally liable under the Code, for offences as provided for by international treaties, or if they have committed grave or especially grave offences punishable under the Code against the rights and freedoms of Ukrainian citizens or the interests of Ukraine.

17. Such individuals shall also be criminally liable under the Code if they have committed outside Ukraine, in complicity with officials who are citizens of Ukraine, any of the offences provided for by articles 368 and 369 of the Code relating to the taking or giving of a bribe, or if they offered, promised or provided illegal benefit to such officials or accepted an offer or promise of undue advantage or received from them such benefit.

18. Additionally, Ukraine drew attention to the draft law on amendments to the Criminal Code and the Criminal Procedure Code to establish criminal responsibility for crimes against humanity, as stipulated under the Rome Statute.

2. Applicable international treaties

19. A list of the treaties referred to, on the basis of information received from Governments, is provided in table 3 below.

[7] For previous submission of Togo, see A/69/174.

3. Judicial and other practice

El Salvador[8]

20. El Salvador drew attention to Decision No. 44-2013/145-2013, of 13 July 2016, by which the Constitutional Chamber of El Salvador declared several articles of the General Amnesty (Consolidation of the Peace) Act, applicable in the country for crimes committed during the Salvadoran armed conflict from 1980 to 1992, to be unconstitutional. The Constitutional Chamber held that "[the] inapplicability of any statute of limitations to [crimes against humanity], which [are] recognized in international law, makes it possible to invoke universal jurisdiction to combat and end impunity, and to ensure justice, truth and full reparation for victims". El Salvador noted that the decision on unconstitutionality was of special importance because it recognized the obligation of the State to protect, respect and safeguard individuals and their fundamental rights and its duty to try those responsible for serious international crimes. El Salvador underlined that this was also an important precedent in the matter of the principle of universal jurisdiction because it expressly recognized universal jurisdiction as a legal concept applicable to serious international crimes and as a means to guarantee justice, truth and full reparations for victims.

Finland[9]

21. Finland reported that no new judgments relevant to this item had been delivered since the submission included in the 2016 report (see A/71/111, paras. 16 to 18). One case relating to war crimes and terrorism was pending in the district court of Tampere. One additional terrorist crime investigation had proceeded to the stage where the prosecutor was considering bringing charges. Three files relating to the suspected commission of terrorism and war crimes were in the preliminary investigation stage.

Germany

22. Germany provided information on a number of cases conducted under the requirements of its Code of Crimes against International Law. On 28 September 2015, the Higher Regional Court in Stuttgart convicted a 52-year-old Rwandan national, Dr. Ignace M., of leading a foreign terrorist organization, the Forces démocratiques de libération du Rwanda, and complicity in four war crimes as defined by the Code of Crimes. He was sentenced to 13 years' imprisonment. A 54-year-old Rwandan national, Straton M., was also convicted of leading the Forces démocratiques de libération du Rwanda and sentenced to eight years' imprisonment. These convictions are not yet final.

23. On 12 July 2016, the Higher Regional Court in Frankfurt am Main convicted a 21-year-old, Aria L., of a war crime against persons as defined by section 8 subsection (1) No. 9 of the Code of Crimes in connection with the civil war in Syria and sentenced him to two years' imprisonment. The court found that the accused had travelled to Syria in the second quarter of 2014. He stayed there for at least three weeks with an acquaintance, Vedat V., who had been engaged as a "religious fighter" in the civil war in Syria against the Syrian army since 2012. One day, sometime between 8 March and 16 April 2014, Vedat V.'s group attacked a Syrian army checkpoint near the Syrian city of Idlib and captured an officer and an ordinary soldier. Both were murdered and decapitated. The fighters put the severed heads on metal poles. The heads were then put on display to the public. The accused

[8] For previous comments submitted by El Salvador, see A/69/174.

[9] For previous comments submitted by Finland, see A/65/181, A/67/116 and A/71/111.

posed next to the severed heads and had himself photographed three times with the intent of ridiculing the deceased and denying them any dignity in death. The conviction is not yet final.

24. A similar case came before the Berlin Higher Regional Court. It was originally dealt with by the Federal Public Prosecutor General and was then passed on the General Prosecutor's Office in Berlin in the fourth quarter of 2016. Following the liberation of the Iraqi city of Tikrit from a terrorist organization, the Islamic State in Iraq and the Levant, in the second quarter of 2015, a former officer of the Iraqi army, who had applied for asylum in Germany, had posed for photographs in which he triumphantly held up the severed heads of two fighters of the Islamic State in Iraq and the Levant. He saved the images on his tablet. On 1 March 2017, he was convicted of war crimes against persons and sentenced to one year and eight months' imprisonment commuted to a suspended sentence. The conviction is not yet final.

25. In another case before the Higher Regional Court in Frankfurt am Main, a 30-year-old German national, Abdelkarim El B., was convicted on 8 November 2016 of war crimes against persons, membership in the Islamic State in Iraq and the Levant, and violation of the War Weapons Control Act. He was sentenced to eight years and six months' imprisonment. The court considered it proven that the accused had travelled to Syria in September 2013 to join that organization in Syria and took part on many occasions in the fighting; to that end, several assault weapons had been placed at his disposal. On 7 November, the unit of which the accused was a member pushed forward into a position abandoned by enemy fighters near the Syrian city of Aleppo, where they found the corpse of a government soldier. They desecrated the deceased by cutting off his nose and both ears while insulting and cursing him, kicked his maimed face and ended by shooting him in the head. The accused took part in these acts and filmed the incident with his mobile telephone over the course of several minutes. The conviction is not yet final.

26. Moreover, the trial against a Syrian national, Suliman Al-S., was underway before the Higher Regional Court in Stuttgart at the time of the submission. The 25-year-old was accused of taking part in the abduction of a Canadian United Nations employee as a member of a terrorist organization, Jabhat Fath al-Sham, and thus violating section 10 (1) No. 1 of the Code of Crimes. Furthermore, the trial of a 42-year-old Syrian national, Ibrahim Al-F., was expected to commence before the Higher Regional Court in Düsseldorf in May 2017. Among other things, he was accused of war crimes against persons as defined in section 8 of the Code of Crimes. In particular, he was accused of arresting several persons arbitrarily over the course of a number of months while leading a district militia in Aleppo; locking them up in makeshift prisons; and torturing them in order to extract ransoms. At least one person was said to have died as a result of the torture.

Senegal

27. Senegal reported on the prosecution, conviction and sentencing of the former president of Chad, Hissène Habré, on the basis of universal jurisdiction. On 30 May 2016, Hissène Habré was found guilty of crimes against humanity, war crimes and crimes of torture, including rape, and was sentenced to life imprisonment by the Extraordinary African Chambers.

28. On 29 July 2016, the judges of the Extraordinary African Chamber in Senegal ruled on the civil claims in the proceedings brought against Hissène Habré. The judges awarded compensation to victims of rape and arbitrary detention, persons who had survived imprisonment and indirect victims. They sentenced Hissène Habré to pay each victim, in accordance with the category to which the victim belonged, a

sum of between 15,000 and 30,000 euros. The judges rejected the claim for collective reparations. The application for the Chadian Government to be held liable was found inadmissible. Senegal reported that the sources of funding for the victim compensation fund include one of Hissène Habré's residences, located in Dakar. Voluntary contributions to the fund were also sought from States, international organizations and other donors wishing to contribute to the payment of compensation to the victims. The judges also ordered the provision of 10 per cent of the total amount and reaffirmed the validity of the pre-judgment attachment of Hissène Habré's assets.

Togo

29. Under its new Criminal Code, Togolese courts have jurisdiction over genocide, war crimes, crimes against humanity and apartheid, regardless of the place where the crimes were committed and of the nationality of the perpetrator, accomplice or victim. At the time of the submission, no cases had yet been brought before a Togolese court on the basis of the principle. Togo underlined that the capacities of its courts must nevertheless be strengthened to allow them to play their appropriate roles. Togo indicated that the principle of universal jurisdiction should be expanded to cover torture in order to be consistent with the rest of its laws. Togo noted that, the application of the principle of universal jurisdiction should be organized and circumscribed through the ongoing reform of the Code of Criminal Procedure.

B. Conditions, restrictions or limitations to the exercise of jurisdiction

Constitutional and domestic legal framework

Germany

30. According to section 12 (1) of the German Criminal Code, crimes are unlawful acts punishable by a minimum sentence of one year's imprisonment. That means that these unlawful acts are always subject to German criminal law, regardless of where they were committed or the nationality of the perpetrator. However, the general applicability of German criminal law does not automatically legitimize the universal prosecution of an offence, especially when the suspect was not a German national or the crime was not committed against a German national. Section 153 *et seq.* of the Code of Criminal Procedure provides for finely graduated limits on prosecution in a number of different circumstances. Germany stated that primary responsibility to prosecute lay with those States possessing territorial jurisdiction; active or passive personality jurisdiction; and a competent international court. This is justified by the special interest of the State of nationality of the perpetrator and of the victim in the criminal prosecution and the greater proximity of the above-mentioned States or courts to the evidence.

31. There are no legal restrictions resulting from the absence of the accused from German territory; this applies in particular to cases in which a German national is suspected of having committed a crime or a crime has been committed against a German national.

Senegal

32. Senegal noted that Act No. 2007-05 of 12 February 2007 amending the Code of Criminal Procedure clearly stated that the exercise of universal jurisdiction was limited to situations where the alleged perpetrator was present in or a victim resided in Senegalese territory.

III. Scope and application of universal jurisdiction: comments by observers

Council of Europe

33. The Council of Europe reiterated its previous comments (see A/66/93, para. 110; A/68/113, para. 34; and A/69/174, para. 47) under which none of its conventions foresees the establishment of "universal" criminal jurisdiction, indicating nonetheless that 12 such conventions contain provisions calling upon States to ensure that their internal law establishes jurisdiction of their criminal courts to judge relevant offences.[10] The Council of Europe conventions did not limit the possibility for the internal law of States Parties to establish types of jurisdiction other than the ones contemplated in the conventions.[11] Without prejudice to the general rules of international law, the Council of Europe conventions do therefore not exclude a State Party from making use of the concept of universal jurisdiction under domestic law.

34. The Council of Europe further reiterated its submission relating to the adoption, by the Committee of Ministers, of a reply to recommendation 1953 (2011) of the Parliamentary Assembly of the Council of Europe, entitled "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", which makes reference to the issue of "universal jurisdiction" (see A/68/113, para. 34).

35. On the case law of the European Court of Human Rights, the Council of Europe reiterated its comments on the cases of *Jorgic v. Germany*[12] and *Ould Dah v. France*,[13] respectively.

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[10] European Convention on the Transfer of Proceedings in Criminal Matters (European Treaty Series (ETS) No. 73), part II; European Convention on the Suppression of Terrorism (ETS No. 90), art. 6.1; Convention on the Protection of Environment through Criminal Law (ETS No. 172), arts. 5.1 and 5.2; Criminal Law Convention on Corruption (ETS No. 173), art. 17.1; Convention on Cybercrime (ETS No. 185), art. 22.1; Council of Europe Convention on the Prevention of Terrorism (Council of Europe Treaty Series (CETS) No. 196), arts. 14.1 and 14.2; Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), arts. 31.1 and 31.2; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), arts. 25.1 to 25.6; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), arts. 44.1 to 44.4; Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No. 211), arts. 10.1 and 10.2; Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215), arts. 19.1 and 19.3; and Council of Europe Convention against Trafficking in Human Organs (CETS No. 216), arts. 10.1 and 10.2.

[11] ETS No. 73, art. 5; ETS No. 90, art. 6.2; ETS No. 172, art. 5.3; ETS No. 173, art. 17.4; ETS No. 185, art. 22.4; CETS No. 196, art. 14.4; CETS No. 197, art. 31.5; CETS No. 201, art. 25.9; CETS No. 210, art. 44.7; CETS No. 211, art. 10.6.; CETS No. 215 art. 19.5; CETS No. 216 art. 10.8. The explanatory reports of the Council of Europe conventions that contain provisions of this nature, but also those of other conventions, provide additional information in this respect and at times include direct references to the concept of "universal jurisdiction". See, for example, the explanatory reports on ETS No. 172 (with regard to art. 5.3) and ETS No. 173 (see para. 83).

[12] European Court of Human Rights, *Jorgic v. Germany*, No. 74613/01, judgment of 12 July 2007, paras. 7, 8, 55 and 64-72. For the Council of Europe's previous comments in relation to this case, see A/68/113, para. 35, and A/69/174, para. 51.

[13] European Court of Human Rights, *Ould Dah v. France*, No. 13113/03, decision on admissibility of 17 March 2009. For the Council of Europe's previous comments in relation to this case, see A/66/93, para. 112, and A/69/174, para. 51.

36. Moreover, in the Chamber judgment in the case of *Nait-Liman v. Switzerland*,[14] the Court held that the decision of the Swiss courts to decline universal jurisdiction with regard to claims for compensation in respect of the non-pecuniary damage caused by alleged torture of the applicant in Tunisia did not violate the applicant's right of access to a court under article 6-1 of the European Convention of Human Rights. The case was referred to the Grand Chamber on 28 November 2016.

37. The Court held in *Rantsev v. Russian Federation and Cyprus*[15] that the obligation to conduct an effective investigation into violations of the right to life protected under article 2 of the European Convention on Human Rights does not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals.

38. Furthermore, in the case of *J. and Others v. Austria*, the Court found that the prohibition of slavery and forced labour, as protected under article 4 of the European Convention on Human Rights, under its procedural limb, does not require States to provide for universal jurisdiction over trafficking offences committed abroad.[16]

International Committee of the Red Cross

39. The International Committee of the Red Cross (ICRC) reiterated its comments on several aspects of universal jurisdiction in international humanitarian law, as set out in previous documents (A/66/93, A/68/113, A/69/174, A/70/125 and A/71/111).

40. The Committee noted that its identification of States that had established some form of universal jurisdiction over serious violations of international humanitarian law in their national legal frameworks had reached more than 110 States, and further noted that investigations and prosecutions on the basis of universal jurisdiction have increased, including prosecutions for serious violations of international humanitarian law committed in international and non-international armed conflicts, without there being any link between the crime and the prosecuting State.

41. The Committee highlighted additional initiatives undertaken to address the issues of preventing and punishing serious violations of international humanitarian law and establishing universal jurisdiction over them. For instance, the Committee (along with other partners) coordinated the Fourth Universal Meeting of National Committees on International Humanitarian Law, which was held in Geneva in November 2016. The event brought together over 280 participants representing 133 countries, over 100 national committees on international humanitarian law, national Red Cross and Red Crescent societies, numerous international organizations and individual experts. With a view to strengthening respect for and implementation of international humanitarian law, the theme of the meeting was "Enhancing protection in armed conflict through domestic law and policy".

42. As noted in previous reports of the Secretary-General, ICRC is in the process of updating its commentaries on the 1949 Geneva Conventions and their Additional Protocols.[17] The updated commentary on the First Geneva Convention of 1949 was

[14] European Court of Human Rights, *Nait-Liman v. Switzerland*, No. 51357/07, judgment of 21 June 2016, para. 121.

[15] European Court of Human Rights, *Rantsev v. Russian Federation and Cyprus*, No. 25965/04, judgment of 7 January 2010, para. 244.

[16] European Court of Human Rights, *J and Others v. Austria*, No. 58216/12, judgment of 17 January 2017, para. 114.

[17] See, for example, A/70/125 and A/71/111.

launched on 22 March 2016, and the commentary on the Second Geneva Convention was published online on 4 May 2017.

United Nations Environment Programme

43. The United Nations Environment Programme (UNEP) stated that universal jurisdiction can play a significant role in bridging the gaps in the enforcement of international environmental law. UNEP highlighted forms of environment-related crimes, including corporate crime in the forestry sector, illegal exploitation and sale of gold and minerals, illegal fisheries/fishing, trafficking in hazardous waste and chemicals and threat finance using wealth generated illegally from natural resources to support non-State armed groups and terrorism. UNEP also underlined the negative effects of such crimes on the environment, future generations, Governments and legal businesses.

44. UNEP further noted the rising number of environment-related crimes linked to transnational organized crime, to terrorist groups and to other non-State armed groups. UNEP indicated that the international community was still far behind in combating the rising role of environment-associated crimes for threat finance in conflict and with respect to development and environmental security. UNEP underlined that the need to strengthen the rule of law for the environment at all levels should include evaluating the scope and application of universal jurisdiction in the area of environment-related crime.

45. UNEP drew attention to several United Nations organs and organizations that had made specific efforts to strengthen environmental rule of law at the global, regional and national levels. These included: the General Assembly, for instance, through its resolution 68/193, in which it emphasized the significance of coordinated action to eliminate corruption and disrupt the illicit networks that drive and enable trafficking in wildlife, timber and timber products, harvested in contravention of national laws; the Economic and Social Council, through its resolution 2013/40 on crime prevention and criminal justice responses to illicit trafficking in protected species of wild fauna and flora, in which it encouraged Member States to make illicit trafficking in protected species of wild fauna and flora involving organized criminal groups a serious crime; the Commission on Crime Prevention and Criminal Justice, through its resolution 23/1, in which it also encouraged Member States to make illicit trafficking in forest products, including timber, involving organized criminal groups a serious crime, and further called for a strengthened and targeted crime prevention and criminal justice response to combat illicit trafficking in forest products, including timber; the Commission on Crime Prevention and Criminal Justice at its twenty-second session, at which it encouraged the integration and coordination of efforts by the United Nations Office on Drugs and Crime and Member States in the field of crime prevention and criminal justice to deal effectively with the challenge posed by emerging crimes that have a significant impact on the environment; the Governing Council of the United Nations Environment Programme, through its decision 27/9, in which it called for the development and implementation of the environmental rule of law to prevent and reduce environmental degradation; and the United Nations Environmental Assembly, through resolution 2/14, in which it noted with concern that crimes that have a significant impact on the environment are increasingly committed by transnational organized criminal groups, and consequently called for ascertaining and documenting the current status of knowledge of crimes that have serious impacts on the environment.

46. UNEP noted that, for greater effect and outcomes, these efforts could be supplemented by the application of universal jurisdiction in order to enhance the enforcement and adjudication capacities in the area of environment-related crime.

UNEP drew attention to recent efforts by the Office of the Prosecutor of the International Criminal Court in its policy paper on case selection and prioritization as providing an encouraging avenue. In the policy paper, the Office of the Prosecutor sought to cooperate and provide assistance to States, upon request, with respect to conduct that constitutes a serious crime under national law, such as the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing and the destruction of the environment.

IV. Nature of the issue for discussion: specific comments by States

Australia[18]

47. Australia reiterated its comments previously submitted on the scope and application of the principle of universal jurisdiction.

Togo

48. Togo highlighted that the international community has recognized that the most serious crimes that threaten the peace, security and well-being of the world must not go unpunished and that their effective prosecution must be ensured by taking measures under national and international law. One such measure is the application of the principle of universal jurisdiction.

49. For Togo, in general, the courts that are competent to hear criminal cases are those of the place where the crime was committed (territorial jurisdiction) or of the country of which the perpetrator or victim is a national (active or passive personality jurisdiction). By contrast, universal jurisdiction allows the courts of any country in the world to prosecute and try the perpetrators of the most serious international crimes, regardless of where the crimes were committed and of the nationality of the perpetrator or victim. Togo stated that this applied to genocide, war crimes, crimes against humanity and torture. Universal jurisdiction is based on the principle that these horrific crimes affect the international community as a whole. Togo reported that, consequently, each State has a duty and, in some cases, an obligation to prosecute the perpetrators of such crimes, just as victims have the right to obtain justice anywhere in the world.

50. Togo stressed that the principle is useful, and indeed necessary, for preventing impunity for serious crimes when the suspect had fled to hide in another State in order to escape justice in his or her own country, or when the crimes in question were perpetrated in particularly unstable regions where people do not enjoy adequate legal protection. As Togo considered such people citizens of the world, this principle grants any State claiming jurisdiction the power to adjudicate international crimes.

51. However, Togo furthered noted that, in order to minimize the risk of interference in the internal affairs of a State, the conditions for the exercise of such jurisdiction must be strictly specified in order to preserve the sovereignty, integrity and political independence of each State.

[18] For previous comments submitted by Australia, see A/65/181, A/68/113 and A/71/111.

Table 1
List of crimes mentioned in the comments by Governments concerning which universal jurisdiction (including other bases of jurisdiction) is established by their codes

Crime	*State*
Crimes against the security of the State, attacks, plots and other crimes against the authority of the State or the integrity of the national territory, crimes likely to disrupt public order	Senegal
Apartheid	Togo
Extortive abduction, slave trade, slavery	Australia
Piracy	Australia
Terrorism-related acts	Senegal
Counterfeiting of foreign currency	Finland, Senegal
Genocide	Australia, Austria, El Salvador, Germany, Senegal, Togo
Crimes against humanity	Australia, Austria, El Salvador, Germany, Senegal, Togo, Ukraine
War crimes	Australia, Austria, El Salvador, Germany, Senegal, Togo
Aggression	Austria, Germany
Torture (and other cruel, inhuman or degrading treatment or punishment)	Australia, El Salvador, Senegal

Table 2
Specific legislation relevant to the subject, based on information submitted by Governments

Category	*Legislation*	*Country*
Aggression	Section 64 (1) (4c) and section 321k of the Penal Code	Austria
	Section 13 of the Code of Crimes against International Law	Germany
Slavery, slave trade or traffic in slaves	Division 270 of the Criminal Code	Australia
	Section 64 of the Penal Code	Austria
Genocide	Division 268 of the Criminal Code	Australia
	Section 6 of the Code of Crimes against International Law	Germany
	Section 64 (1) (4c) and section 321 of the Penal Code	Austria

Category	*Legislation*	*Country*
Crimes against humanity	Division 268 of the Criminal Code	Australia
	Section 7 of the Code of Crimes against International Law	Germany
	Section 64 (1) (4c) and section 321a of the Penal Code	Austria
	Article 438 of the Criminal Code	Ukraine
War crimes	Division 268 of the Criminal Code	Australia
	Sections 8 to 12 of the Code of Crimes against International Law	Germany
	Section 64 (1) (4c) and sections 321b to 321f of the Penal Code	Austria
Torture	Division 274 of the Criminal Code	Australia
	Section 64 of the Penal Code	Austria
Piracy (and other acts of violence at sea and air)	Part IV of the Crimes Act 1914	Australia
	Crimes (Ships and Fixed Platforms) Act 1992	
	Section 64 of the Penal Code	Austria
Human trafficking	Section 64 of the Penal Code	Austria
Terrorism	Section 64 of the Penal Code	Austria
Trafficking in toxic, narcotic or psychotropic substances	Section 64 of the Penal Code	Austria
Transnational organized crime	Section 64 of the Penal Code	Austria
Sexual crimes	Section 64 of the Penal Code	Austria
Counterfeiting of currency	Section 1(1) of the decree on the implementation of section 7 of chapter 1 of the Criminal Code	Finland

Table 3
Relevant treaties that were referred to by Governments, including treaties containing *aut dedere aut judicare* provisions

Universal instruments

International criminal law	Rome Statute of the International Criminal Court, 1998	Australia, Austria, Senegal, Ukraine
International humanitarian law	Geneva Conventions of 1949 and the Additional Protocols thereto	Senegal, Togo

Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Senegal, Togo
Genocide	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	Senegal
Enforced disappearance	International Convention for the Protection of All Persons from Enforced Disappearance, 2006	Senegal, Togo
Attacks against civil aviation and maritime traffic	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988	Australia
	2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf	Australia